



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/762,631

01/21/2004

Margaret Slone

115.0 INP

5025

30480

7590

02/14/2006

EDWARD S. SHERMAN, ESQ.  
3554 ROUND BARN BLVD.  
SUITE 303  
SANTA ROSA, CA 95403

EXAMINER

SMITH, KIMBERLY S

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/762,631	Applicant(s) SLONE, MARGARET	
	Examiner Kimberly S. Smith	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-11 and 15-17 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see the response, filed 11/16/05, with respect to the Madden et al. reference have been fully considered. It is noted that the claims were not rejected over Madden et al., under 35 U.S.C. 103(a), i.e. the Madden reference provided no teaching for modifying the base references. The rejection was solely rejected over Morris in view of Keyes. As the Applicant has not argued the basis of the equivalency of the cardboard and the folded plastic based corrugated board, the rejection is maintained as proper.
2. Applicant's arguments with respect to claims 1, 3-9, and 11-14 have been considered but are moot in view of the new ground(s) of rejection.

### ***Drawings***

3. The drawings were received on 11/16/05. These drawings are approved.

### ***Specification***

4. The abstract of the disclosure is objected to because the abstract is directed to a non-elected species of the invention (i.e. the use of a vinyl coating on the exterior structure whereas the instant invention is directed to the exterior being defined by a box). Correction is required. See MPEP § 608.01(b).

***Claim Objections***

5. Claim 1 recites the limitation "the foam insulating material" in line 8. There is insufficient antecedent basis for this limitation in the claim.
6. Claim 1, line 7: it appears replacing "shelter" with - -sheltered- - would provide a more clear reading of the claim limitation.
7. Claim 17 appears to have several grammatical errors within the claim.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
9. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
10. Claim 11 recites the limitation "said box" in line 9. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3644

12. Claims 1, 3, 4, 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebeskind, US Patent 2,979,246 in view of Jones, US Patent 2,811,298.

Liebeskind discloses a box (1) having at least one flap (as viewed in Figure 1) and a plurality of substantially rigid foam panels (2) disposed on each interior surface of the box (as viewed in Figure 4) wherein a animal sheltered in the box is exposed directly to the foam insulating material without an intervening barrier. However, Liebeskind does not disclose an opening within the box. Jones teaches within the same field of endeavor of foldable sheet material the use of holes (61) for ventilation purposes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the ventilation holes through the side panels as taught by Jones with the device of Liebeskind in order to maintain ventilation within the box and prohibit increased moisture accumulation on the interior of the box.

Regarding claim 3, Liebeskind as modified discloses the flap is secured to the adjacent sides to seal the box (as viewed in Figures 2 and 3).

Regarding claim 4, Liebeskind as modified discloses the invention substantially as claimed with the exception of glue being used to secure the flap instead of tape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use tape to seal the flap since the examiner takes Official Notice of the equivalence of glue and tape for their use within the box forming art and the selection of any of these known equivalents to adhere a box would be within the level of ordinary skill in the art.

Regarding claim 7, Liebeskind discloses a cushioning material (30) disposed on the upper surface of the box.

Art Unit: 3644

Regarding claim 8, Liebeskind as modified discloses the two flaps which fold down to form the sides of the box (reference Figure 4 of layout of the flaps). However, Liebeskind as modified does not disclose that the opening is formed on a different side of the box. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the opening on a different side of the box, since it has been held that rearranging parts of a invention involves only routine skill in the art.

Regarding claims 9 and 10, Liebeskind as modified discloses the inventions substantially as claimed. However, Liebeskind does not positively recite the material from which the box is manufactured. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic corrugated board as the material for forming the box, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability (e.g. water-resistance, durability, ability to be cleaned, etc) for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Further regarding claim 10, Liebeskind discloses a prefabricated board adapted to be formed into a box (reference Figure 4).

13. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morris, US Patent 5,383,422 in view of Keyes et al., US Patent 3,946,944 (Keyes)

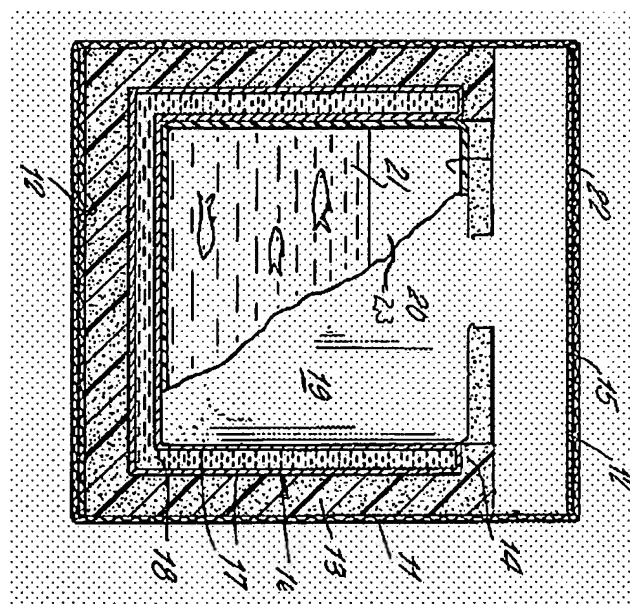
Morris discloses a pet shelter comprising a box (10) having at least one flap opening to expose the interior cross-section of the box (as viewed in Figure 1) with an opening formed in one side of the box. However, Morris does not disclose the use of a plurality of rigid foam panels. Keyes teaches within the analogous art of housing structures the use of a plurality of rigid foam panels (44) disposed on the interior surface wherein the panel has an opening therein

Art Unit: 3644

(at 64) corresponding to an entrance and exit portal for the purpose of providing heat insulation to the housing structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of Keyes' panels with the device of Morris in order to provide for a shelter which would provide heat retention properties thereby allowing for use in cooler climates. Morris as modified discloses the claimed invention except that the box is fabricated from cardboard instead of folded plastic based corrugated board. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic corrugated board instead of card board, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

14. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willinger, US patent 3,236,206.

Willinger discloses the invention substantially as claimed (reference augmented Figure 2 below showing the reference rotated to clarify the reading of the claim limitations), i.e. a box having at least one opening (as viewed in Figure 1), a plurality of vertical rigid foam panels, a lower panel and upper panel and a defined opening in one of the vertical panels. However, Willinger does not disclose that the upper rigid foam panel is disposed such that it rests on the edges of at least two vertical panels as it is shown to be a singular foam shell. It would have been obvious to one having ordinary skill in the art at the time the



Art Unit: 3644

invention was made to use a separate top panel since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Regarding claim 16, Willinger discloses the inventions substantially as claimed.

However, Willinger discloses the use of corrugated cardboard instead of plastic based corrugated board. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic corrugated board as the material for forming the box, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability (e.g. water-resistance, durability, ability to be cleaned, etc) for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Further regarding claim 10, Liebeskind discloses a prefabricated board adapted to be formed into a box (reference Figure 4).

15. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Willinger as applied to claim 16 above, and further in view of Liebeskind, US Patent 2,979,246.

Willinger discloses the invention substantially as claimed. However, Willinger does not disclose a cushioning material disposed on the upper surface of the box. Liebeskind teaches within the same field of endeavor a cushioning member (30) located on the top of the box to provide aesthetical ornamentation and increased shock absorption. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the cushioning member as taught by Liebeskind with the device of Willinger so as to provide additional shock absorption for the packaging.



Art Unit: 3644

*Allowable Subject Matter*

16. Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.


Art Unit: 3644

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly S Smith  
Examiner  
Art Unit 3644

kss



TERI PHAM LUU  
SUPERVISORY  
PRIMARY EXAMINER